IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5392 OF 2006

M/s.Vardhman Developers Ltd. : Petitioners

versus

Lyra Travasso : Respondent.

WITH

WRIT PETITION NO.5411 OF 2006

M/s.Vardhman Developers Ltd. : Petitioners

versus

Josephine Fernandes : Respondent.

WITH

WRIT PETITION NO.5412 OF 2006

M/s.Vardhman Developers Ltd. : Petitioners

versus

Vijaya Netaji Bhosale : Respondent.

WITH

WRIT PETITION NO.5413 OF 2006

M/s.Vardhman Developers Ltd. : Petitioners

versus

Natwarlal Bhanabhai Mithaiwala : Respondent.

WITH

WRIT PETITION NO.5414 OF 2006

M/s.Vardhman Developers Ltd. : Petitioners

versus

John Lemos : Respondent.

WITH

WRIT PETITION NO.5420 OF 2006

M/s.Vardhman Developers Ltd. : Petitioners

versus

Prakash Tulsidas Umrakia : Respondent.

Mr.A.A.Kumbhakoni, Sr.Advocate, with Ms.Geeta Mulekar for the Petitioners.

Mr.S.K.Shinde, Sr.Counsel i/by Mr.Vinod Shah for the respondents.

CORAM : D.G.DESHPANDE, J.

DATED : June 22, 2007.

COMMON ORAL ORDER. (IN CHAMBER).

1. Heard learned advocate Mr.Kumbhakoni for the petitioners and learned advocate Mr.S.K.Shinde for all the respondents. Orders were passed by me in these matters on 12.01.2007 and 07.03.2007. Thereafter my assignment was changed and the matters appeared before Justice Marlapalle on 14.06.2007. After hearing the parties for some time on the same date i.e. on 14.06.2007, Justice Marlapalle passed an order and observed that in the interest of both the parties that these petitions are placed before me. Therefore, these petitions have again come back to me.

2. When the petitions appeared before me for the 1st time on 12.01.2007, then on 07.03.2007 and in the mean time whenever they appeared, no party argued the matters on merit. Today also no arguments on merit are advanced. When I passed order dated 07.03.2007, the respondents were represented by advocate Mr.A.N.Jakhadi. I am reproducing my order dated 07.03.2007 and also

the order of Justice Marlapalle dated 14.06.2007.

Order dated 07.03.2007 :-

". Writ Petition No.5392 of 2006 is mentioned as the same is not on board because it was not circulated. Taken on Board and tagged with Writ Petition Nos.5411, 5412, 5413, 5414 and 5420 of 2006.

. Respondent in Writ Petition Nos.5411, 5412, 5413 and 5392 of 2006 are present in person.

. So far as Writ Petition No.5414 of 2006 is concerned, wife of the Respondent Mrs.Espu John Lemos is present. She holds Power of Attorney of the Respondent. Clause 12 of the Power of Attorney empowers her to enter into a compromise on behalf of her husband. She tenders Zerox copy of the power of attorney, the same is taken on record.

. Nobody is present in Writ Petition No.5420 of 2006, therefore S.O. 14.3.2007.

. Respondent in Writ Petition Nos.5411, 5412, 5413, 5415 and 5392 of 2006, and power of attorney holder of the Respondent in Writ Petition No.5414 of 2006, informs that they are informed by their Advocate about the proposal of compromise given by the Builders - Petitioners and the contents thereof and they are ready to compromise. But their anxiety is that whatever undertaking or statement is given by the builders - petitioners, they should have binding force so that the builders - petitioners does not escape their liability after taking possession from the respondent in the above matters. The Court will definitely take care of that aspect of the matter. Terms of proposal given by the Counsel for the petitioners to the Counsel for the Respondent on earlier occasion, taken on record and marked ‘X’ for identification.

. All the six matters adjourned to 14.3.2007."

Order of Justice Marlapalle dated 14.06.2007 :-

". Mr.Kumbhakoni, the learned counsel for the petitioners has referred to the order passed by this Court (Hon'ble Shri Justice D.G.Deshpande) on 7th March 2007 wherein readiness of the respondents in settlement of the compromise was recorded. Mr. Shinde, the learned counsel appearing for the respondents does not dispute the readiness shown by the respondents for settlement. However, he states that the terms of settlement were not finalised and, therefore, the willingness to settle was never denied. Mr.Kumbhakoni, the learned counsel for the petitioners on the other hand states that the Consent Terms were drafted, placed on record and were perused by the Court and copies thereof were directed to be served on the

respondents and, therefore, the settlement could be only on the lines of the Consent Terms. As per Mr.Kumbhakoni in view of the order passed on 7th March 2007, the respondents cannot move away from the terms of the settlement reduced in writing in the form of Consent Terms and taken on record and marked as "X" for identification. Mr.Shinde does not agree with these contentions.

. It would be in the interest of both the parties that these petitions are placed before Hon'ble Shri Justice D.G.Deshpande and Mr.Kumbhakoni in fact is of the same opinion.

. The Registrar (Judicial) to take appropriate steps."

3. The dispute between the petitioners and the respondents is, whether the parties have arrived at compromise and, whether the compromise was recorded by me in my order dated 07.03.2007.

4. It is our experience that whenever the

matters are compromised in Court and, the compromise terms are recorded, the parties often changed their advocate subsequently so that they can go back from whatever recorded by the Court earlier. The new advocate, being ignorant what happened earlier, tries to substantiate his case by filing an affidavit of the parties putting blame obviously on the earlier advocate. We deprecate this practice. In fact, I could have issued notice to advocate Mr.Jakhadi who was present on 12.01.2007 and also on 07.03.2007 and I could have confronted with him what happened in Court on these two dates. But I do not want to set up a bad precedent in this regard.

5. On 12.01.2007 when the matter first appeared before me, learned advocate Mr.Kumbhakoni for the petitioners, in the very beginning, pointed out that out of 24 tenants, suits were filed against 17 tenants. Seven have already been settled. Then 10 settled, then 1 from the present group has been settled in the Court and only six respondents in these petitions remain. He, therefore, submitted that this is a matter where parties can settle. Advocate Mr.Jakhadi did not agree to this proposal.

Therefore, I asked Mr.Kumbhakoni to hand over the proposal for settlement to Mr.Jakhadi. Accordingly, it was handed over to him.

6. When the matter appeared before me on 07.03.2007, at that time advocate Mr.Jakhadi for the respondents expressed his regrets for having opposed this settlement. He said that he had seen the building occupied by the respondents. It was in dilapidated condition and, therefore, he said that his clients were ready to compromise the matter as it was in their interest only. Thereafter the order dated 07.03.2007 came to be passed by me which I have reproduced above. Today the newly appointed advocate for the respondents, on the strength of affidavit, submitted that advocate Mr.Jakhadi has pressurised the respondents in entering into compromise with a threat that if they don't compromise, they would be evicted from the suit premises.

7. This contention of the respondents is required to be out right rejected. It is very easy to file an affidavit making certain allegations against the advocate appearing

earlier. Learned advocate Mr.Shinde for the respondents knows and he supposes to know that on the next date of hearing, these very clients can make similar serious allegations against him and totally disown him. We cannot allow this practice to be tolerated and, therefore, absolutely no weightage can be given to the contentions raised in the affidavit.

8. Now, whether in the impugned order dated 07.03.2007, the parties had expressed their desire to compromise is to be seen, because that is under challenge. I have already noted what is happened on 07.03.2007 and I have also pointed out to advocate Mr.Shinde that courts orders cannot be contradicted nor permitted to be contradicted by filing an affidavit in court. If that is allowed, every order of the court can be contradicted by litigants who consider that injustice is caused to them or for any oblique motive or reason. Therefore, whatever is recorded in the Court has to be treated as final and no party can be permitted to adduce evidence to contradict the record of the Court.

9. So far as order dated 07.03.2007 is

concerned, it is noted in the 1st line that Writ Petition No.5392 of 2006 was not on board because it was not circulated, but it was taken on board and tagged with other writ petitions. I questioned Mr.Shinde that if the respondents did not want to compromise, firstly why all of them were present in the court and secondly why the respondent in W.P.5414 of 2006 was present to represent her husband with power of attorney which empowers her to enter into compromise. He has no satisfactory explanation about this conduct. The joint affidavit filed by the respondents today about the pressure being exercised upon them by advocate Mr.Jakhadi stands falsified because the respondent in Writ Petition No.5414 of 2006 was present in Court with power of attorney duly executed by her husband which empowers her to enter into compromise. If at all any pressure was exercised, it was open to the respondents to lodge their protest, to disown the submissions made by their advocate and at least the respondent in Writ Petition No.5414 of 2006 could have refused to have any authority to enter into compromise. The copy of the power of attorney was taken on record. The copy of the proposal given by the petitioners was also taken

on record and marked "X" for identification.

10. The later part of the order dated 07.03.2007 will show that only anxiety of the respondents was that the builders give promises but they do not abide by the promises and, therefore, only thing that is to be considered was that aspect of the matter i.e. how to bind the builders in respect of the liability taken by them in the proposal marked as "X" for identification, by which Court can protect the interest of the respondents.

11. From what happened on 12.01.2007 and 07.03.2007, it is clear that the respondents voluntarily by their own will accepted the proposal of compromise and has agreed to the terms of proposal marked as "X" for identification. They cannot be permitted to contend that the terms of the proposal were never accepted by them and only consent was given by them to consider the proposal.

12. The learned advocate for the respondents contended that even after 07.03.2007, the builders forwarded to them another proposal which

means that the respondents had not consented to the terms marked as "X" for identification.

13. Mr.Hitendra Umrakia, the brother of respondent Prakash Umrakia in Writ Petition No.5420 of 2006 is present. He states that in the facility, concession or benefit which were given to the respondents as per the terms marked as "X" for identification, nothing is reduced, altered or changed to the detriment of all the respondents in the subsequent proposal given by the builders. The counsel for the respondents, after going through the terms of both the proposals i.e. terms marked as "X" for identification and the subsequent proposal and after consulting his clients/respondent Smt.Vijaya Bhosale in Writ Petition No.5412 of 2006 admits that nothing given to the respondents as per terms as "X" for identification was taken away, curtailed, cut down, abridged or removed in the subsequent proposal.

14. It is, therefore, clear that the second proposal given by the builders was giving certain more advantages to the respondents and they were not going to take anything that was offered

earlier as per terms marked as "X" for identification. In this view of the matter, I do not find any merit in the objection raised by the respondents now. The parties had agreed for the terms marked as "X" for identification and, therefore, they are bound by them.

15. It is true, as argued by Mr.Shinde, that the terms of compromise do not become final unless they are signed by both the parties. Hence the following order :-

:ORDER:

The respondents in each of the petitions to sign the consent terms marked as "X" for identification within four weeks from today, so also the petitioners before the Registrar General of this Court.

Whatever liabilities have been taken by the petitioners in the consent terms marked as "X" for identification are accepted as undertaking of the builders and they will be bound to comply with the

same.

Nothing remains in these matters. All the Petitions are disposed off.

[D.G.DESHPANDE,J]